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**Basel Convention on the Control of
Transboundary Movements of
Hazardous Wastes and their Disposal**

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**Rotterdam Convention on the Prior
Informed Consent Procedure for
Certain Hazardous Chemicals and
Pesticides in International Trade**



**Stockholm Convention on
Persistent Organic Pollutants**

**Ad hoc joint working group on enhancing cooperation and
coordination among the Basel, Rotterdam and Stockholm conventions**

Second meeting

Vienna, 10–13 December 2007

Item 3 of the provisional agenda*

**Consideration of the intersessional work undertaken by the
members of the ad hoc joint working group and by the
Secretariats of the Basel, Rotterdam and Stockholm Convention**

The potential for cooperation on compliance

Note by the secretariats

Attached is the thought starter on “The potential for cooperation on compliance” prepared by the United Kingdom of Great Britain and Northern Ireland for consideration by the meeting. The document has not been formally edited.

* UNEP/FAO/CHW/RC/POPS/JWG.2/1.

Basel-Rotterdam-Stockholm Convention AHJWG on cooperation and coordination Thought starter on compliance Prepared by the UK

The following was originally designed as a contribution to the intersessional work undertaken by a group possibly to be led by South Africa/Chile. As no thought starter has been produced, the UK offers the following as a basis for AHJWG discussion of this topic.

At present, the Basel Convention has a compliance mechanism whereas negotiations for such mechanisms under the Rotterdam and Stockholm Conventions are still ongoing. There would appear to be two means of addressing cooperation and coordination among compliance mechanisms under the three conventions: firstly, the development of synergies between three separate mechanisms or, secondly, the development of a single joint committee or joint mechanism. Any collaborative approach, whichever of the two is adopted, may be implemented by means of a COP decision under each convention.

Synergies

It would be possible to develop arrangements for information exchange and consultative processes among the three compliance committees by inserting a paragraph to this effect in the Basel mechanism (established under Decision VI/12) and to propose similar paragraphs for inclusion in the draft texts still subject to negotiation. This would allow a limited form of coordination (when all three mechanisms are established) without jeopardising the ability of individual committees, populated with members having expertise relevant to a particular convention, from looking at issues specific to that convention.

In order to ensure close cooperation and coordination, working practices could involve:

- a common secretariat serving all three committees;
- the presence of the chairs of all three committees at each other's meetings; and/or
- the holding of committee meetings in rotation or back to back.

Single mechanism

In procedural terms, a joint compliance mechanism may be achievable given that none of the three conventions expressly provides for a compliance mechanism of its own: Basel does not provide for one in the treaty itself, the committee being a product of COP decision (VI/12), whilst both Rotterdam and Stockholm provide that their COPs develop and approve procedures and institutional mechanisms for the determination of non-compliance with the provisions of the convention and for the treatment of Parties found to be in non compliance (article 17 of both the RC and SC); these need not necessarily be separate procedures or mechanisms for each convention. Any proposal for coordinated arrangements will therefore need to consider whether:

- A single committee is established that considers matters referred to it under three separate compliance mechanisms (i.e. the existing BC mechanism and those to be developed under RC and SC);
- The RC and SC develop a single mechanism for the chemicals conventions whilst leaving the current BC mechanism to operate independently;
- the RC and SC take on the BC arrangements to form a single committee; or
- a wholly-new mechanism is developed for adoption under all three conventions.

Considerations

Certain considerations will come to the fore in developing any single compliance committee or mechanism:

- **membership:** the number and expertise of members will be relevant. At present, Basel has fifteen members comprising three from each of the five UN regions. Will this also apply to the chemicals conventions? Basel requires members that have experience relating to the subject matter of the Convention in areas including scientific, technical, socio-economic and/or legal fields. No such sectoral-specific requirements exist in the current SC draft text. Additionally, the rotation of members and the terms of those already serving under the Basel committee will need to be factored into any proposed new arrangement for a single committee if the Basel committee is to be amalgamated with those under the chemicals conventions.
- **triggers:** these, usually contentious, options for initiating a compliance review lie at the heart of a compliance mechanism and may need to be aligned if a single mechanism is to be developed; at present, Basel allows for a

self, Party to Party and limited secretariat trigger. All are included as possible options in the RC and SC negotiations, as is a committee trigger.

- **measures:** these concern the action that the committee or the COP can take in the event of a finding of non compliance. Again, these are subject to much negotiation and a decision will need to be taken as to whether the existing Basel measures (including facilitation of assistance, issuing a cautionary statement and providing advice) should be imported into the other conventions. Currently variations exist in the RC and SC draft texts, none of which are wholly consistent with each other.
- **workload:** would a single committee be capable of examining cases of non compliance arising under three conventions? To date, the Basel committee has had no substantive cases before it, so this may not initially appear to be a problem although practice under other mechanisms demonstrates that a regular caseload encourages the submission of new cases.
- **Openness:** The openness of the committee will also be an issue. Under Basel, the meetings of the compliance committee shall not be open to other Parties or the public, unless the Committee and the Party whose compliance is in question agree otherwise. It seems likely from the draft compliance texts under Rotterdam and Stockholm that these will be more open, allowing Parties to observe, unless the country whose compliance is in question wishes otherwise.

The experience from the Basel compliance committee, as described in the paper provided by the Basel secretariat, should also be taken into account when considering whether separate or common mechanisms are developed, namely:

- The terms of office for members;
- The capacity in which a member of a committee serves;
- The facilitation of assistance; and
- The financing of only developing country members as opposed to the full financing of all members from the core budget

Other considerations that may be relevant when contemplating the possibility of a single mechanism may be:

- the integrity of each convention as a legally distinct treaty, with separate and independent decision making bodies, i.e. the relevant COPs that take decisions on compliance matters;
- how the consequential shared ownership and authority over any joint compliance committee or mechanism would operate e.g. in the case of separate and inconsistent guidance from all three COPs;
- the need, through the provision of adequate and effective compliance mechanisms, to adjust those mechanisms to a certain extent to meet the particular characteristics of the Convention in question i.e. the notion that they be “tailor-made”; and
- the different interests of Parties currently negotiating the RC and SC mechanisms, and how these relate to the existing BC mechanism.